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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

JAN 09 2012

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner seeks employment as a mechanical engineer. The petitioner is the chairman, founder and half owner of [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on June 10, 2009. In a statement accompanying the initial filing, counsel explains why the petitioner believes that he qualifies for the national interest waiver:

> [The petitioner] is the inventor and patent holder to '[redacted] aka '[redacted]

[redacted]

The fast growth of the populations in many countries in conjunction with the rising demand for improved transportation systems as well as vehicles create an increasing necessity for more modernizing the fuel dispensing systems, smaller, environmentally friendlier and more efficiently [*sic*] gasoline stations. However, the installment of additional standard size dispensing systems and devices has become not only prohibitively costly, but also virtually impossible in highly urbanized areas due to a lack of available vacant land.

The [redacted] requires only ¼ of the land of a standard gasoline station; its [*sic*] more advanced technologically, its [*sic*] saves the environment and reduces costs in overall operation by 75%.

The [redacted] is not only more cost and land efficient, it is more environmentally friendly. Consumers having to drive their vehicles greater distances in order to reach the closes[t] gasoline station waste and extra 127,750,000 liters a year, which can be prevented by installing this system.

In addition, by reducing the driving distance for consumers, the [redacted] cars will be on the road for shorter distances, thereby reducing their pollutant emissions.

Lastly, the [redacted] is essential for quickly providing additional gasoline stations to consumers in the case of emergency evacuations or simply for high tourist time periods. In support of the foregoing, we have enclosed herewith a series of articles and research studies that clearly establish the magnitude of the issue and the significance of modernizing technology for handling it. **(Exhibit 7)**.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The only support that counsel cited for the above claims was "Exhibit 7." The record, as it now stands, does not include tabs or interstitial pages to identify the numbered exhibits. Counsel's exhibit list referred to Exhibit 6 as "Letters of Recommendation" and Exhibit 7 as "Research Studies." The materials that immediately follow the recommendation letters (and which, therefore, presumably comprise Exhibit 7) are published technical standards from the National Fire Protection Association, the British Standards Institution, the American Welding Society and ASTM International (formerly known as the American Society for Testing and Materials). The petitioner did not explain how these lengthy, highly technical publications establish that the [redacted] "is essential" for the reasons claimed by counsel.

Counsel cited "[t]he fast growth of the populations in many countries in conjunction with the rising demand for improved transportation systems as well as vehicles." Counsel did not indicate whether

the United States is one of the "many countries." In a developing nation where the majority of the population has only recently begun to have access to automobiles, there is arguably a need for quick development of a fuel supply infrastructure. The petitioner, however, did not show that this is the case for the United States.

The petitioner submitted photographs and news articles to demonstrate that there is often high demand for gasoline at peak tourism periods and during evacuations before hurricanes and other foreseeable natural disasters. The petitioner asserted that many of these problems "will be solved" [redacted]

The petitioner submitted four witness letters with the petition. Three of the witnesses are from the petitioner's native Iran. [redacted] where the petitioner studied from 1984 to 1991, stated:

> [The petitioner's] company moves toward producing [redacted]. The design and production of the [redacted] [won the petitioner] the presidential prize which is a high[ly] prestigious award in our country. Due to the high level of quality and safety, the company's products became very popular and at the moment the company managed to capture around 55% of the Iranian shares which is a great success for a private company in such a competitive market. This success is due to [the petitioner's] experience and his cooperation in different research projects defined between his company and IUT. The projects were defined to study different aspects of the product such as design, fluid flow, electrical and safety. He has actively participated in all of them and used the results obtained from them in his company's products.
>
> In many places, during the holiday seasons some areas have many visitors and therefore, [redacted] and people have to stay in long queues. In addition, they may need to travel long distances [redacted] In modern day, many new planned cities have been developed or are under construction, mostly around main metropolitan areas. . . . They usually have high population and finding suitable lands [redacted] them is a major problem. . . . [The petitioner] [redacted] The project was successfully finished and a prototype was constructed according to the results of the project. He registered a patent for this new invention. The new product has many advantages. The main advantages are: 1- The solution of [redacted] particularly during the rush-hours and holiday seasons and reducing the fuel consumption; 2- The required investment is about [redacted] 3- [redacted] 4- The area needed for the installation of equipment is around 1/3 of the area required [redacted]

[redacted] stated:

> [B]ecause of a rapid increase in new cars [redacted] Due to high costs of land ownership or leasing in IRAN, investment for [redacted] In reply to this fact, [the petitioner] accomplished a research project so called [redacted] which was successfully lead [*sic*] to construction of a research prototype and also and [*sic*] industrial production line of these [redacted]

(Capitalization in original.) [redacted] credited the petitioner with the following achievements:

1- Establishment of [redacted] in Iran.
2- Establishment of [redacted]
3- Design and manufacturing [redacted] which is a[n] innovative solution [redacted]

The above witnesses attested to [redacted] but the record contains no documentary evidence of a similar systemic problem in the United States.

The only initial witness outside of Iran is [redacted] who repeated several of the above claims and asserted that the petitioner's development of [redacted] "has highly influenced to solve traffic problem [redacted] while conserving energy and providing a "high benefit margin for the . . [redacted]

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to

an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The Board of Immigration Appeals held that "expert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact.'" *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008). Here, the witnesses have made several claims of fact, such as the assertion that the petitioner's company has a 55% market share and that his gas stations have relieved a shortage of such facilities. The witnesses have ventured beyond opinion into the realm of testable claims of fact, and it is therefore significant that the petitioner has submitted no documentation to corroborate those claims.

The petitioner submitted translated copies of several newspaper articles, all dated November 8, 2008, reporting the [redacted] Some of the stories stated that the [redacted] while others stated that the [redacted], and was located "in the small town of Imam Hossein." Some of the articles mentioned plans to [redacted] but the petitioner did not document any further construction, or any media coverage after November 8, 2008.

On February 8, 2010, the director issued a request for evidence, instructing the petitioner to document "a past record of specific prior achievement that justifies projections of future benefit to the national interest." In response, the petitioner submitted a booklet indicating that, apart from other advantages claimed previously, the [redacted] could play "a big role for [redacted] to help with relief workers' operations as well as ordinary people." The petitioner submitted copies of illustrated news articles depicting [redacted] Many of these stories indicated that the problem was [redacted] The petitioner did not explain how his products would [redacted]

The petitioner claimed that "ten sets were installed in the capital" but did not document this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner also did not document any reduction [redacted] the beneficial effects that he has claimed.

The petitioner submitted a translated letter from the Iran Standard and Industrial Research Organization, informing the petitioner of his two-year appointment as [redacted] The petitioner did not establish the significance of this appointment. Furthermore, the date on the letter, October 24, 2009, occurred after the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause

a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner submitted copies of contracts and other materials establishing that [redacted] conducts business in Iran, but did not explain how these documents set the petitioner apart from other business owners and managers. More relevant to the petitioner's business is a June 22, 2009 letter informing the petitioner of his re-election to the "board of directors of Kowsar Commercial-Administrative center," the business park that is the home of the petitioner's company. Still, absent further evidence, the AAO cannot even tell whether this was a contested election, let alone that it is otherwise a significant distinction.

The petitioner shows that he submitted his plan for [redacted] The same year, the petitioner also submitted a plan for [redacted] There is no evidence that either plan won the award, or came close to doing so. (In an earlier year, the petitioner had previously received a "rank 3rd of innovation" for a [redacted]

The petitioner documents that he holds a patent for [redacted] An alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis. *NYSDOT* at 221 n.7.

The director denied the petition on August 31, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner had not established the necessary impact on his field. The director observed:

> The record . . . contains copies of several codes and standards that may pertain to the components of the [redacted] However, nothing in the record shows that the [redacted] conforms to these codes and standards, or if [redacted] conforms to federal, state, and local laws governing [redacted] It has not been established that installation of the [redacted] would be permitted within the United States.

On appeal, counsel asserts that the petitioner meets all three prongs of the national interest test set forth in *NYSDOT*. Because the director did not dispute the first two prongs, only the third bears further discussion here.

Counsel repeats the prior assertion that "Petitioner is the recipient of [redacted] This award is only conferred upon someone for 'outstanding achievements in research, innovation, and invention, in fields related to science and technology.'" Counsel quoted from [redacted] printouts of which had accompanied the initial filing of the petition. As noted previously, the translated materials in the record congratulated the petitioner for [redacted]

at the [redacted] The record does not state whether [redacted] is the same thing as a [redacted] Stipulating that '[redacted] are alternative transliterations of the same word, "rank 3rd" is not self-evidently an "award." [redacted] printout indicated that "the list of the Laureates is compiled for publication and announced in the [redacted] website," but the petitioner did not submit a printout of any "list of the Laureates" including his name. The record does not indicate how many entries achieved "rank 3rd" in the same year as the petitioner's invention.

Under the USCIS regulation at 204.5(k)(3)(ii)(F), evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations can provide partial support for a claim of exceptional ability. Because exceptional ability does not automatically qualify an alien for the waiver, and government recognition (such as a certificate from [redacted] only partially supports a claim of exceptional ability, the AAO cannot conclude that the certificate strongly indicates eligibility for the waiver.

Counsel asserts that the previously submitted evidence demonstrates the petitioner's impact on his field. Rather than elaborate upon this claim, counsel contends that the evidence submitted is, itself, documentation of the petitioner's impact. This line of reasoning presumes "impact" to be the same as "activity." Counsel states: "Petitioners [*sic*] manufacturing plant became the first factory in the Middle East, which produces [redacted] The preceding sentence described the factory itself, rather than its importance, influence or impact.

With respect to the [redacted] counsel stated: [redacted] could be easily modified, if needed, to conform to the US Federal, State, or local laws. Due to its usefulness and unique efficiency, [redacted] usage would certainly be permitted within the U.S." (emphasis in original). Counsel states that the director should not "deny this application based on such a frivolous, albeit vague and uncertain, variation." Considering that the waiver claim leans rather heavily on the [redacted] it is not "frivolous" to question the extent to which the invention conforms to United States standards and safety protocols.

The petitioner contends that his [redacted] could alleviate a number of problems and concerns, but he has submitted no evidence that they have actually done so in the areas where they are already in use. The waiver claim, therefore, relies primarily on unproven speculation and self-serving conjecture. The record, at times, reads more like an advertisement for the petitioner's product than an objective description thereof.

The petitioner has identified several real or hypothetical problems related to [redacted] but has not demonstrated that these problems exist at a national level in the United States, or that the remedy for these problems is the construction of [redacted] The petitioner's invention of [redacted] does not self-evidently demonstrate his eligibility for a national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.